

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEON LUCAS,

Plaintiff,

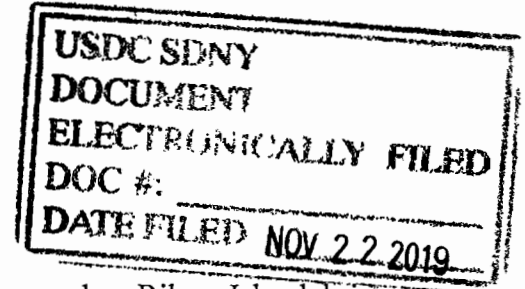
-against-

NEW YORK CITY DEPARTMENT OF
CORRECTIONS; CYNTHIA BRANN,
COMMISSIONER OF THE DEPARTMENT OF
CORRECTION,

Defendants.

19-CV-9974 (GBD)

ORDER OF SERVICE



GEORGE B. DANIELS, United States District Judge:

Plaintiff, currently incarcerated at the North Infirmery Command on Rikers Island, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants held him in solitary confinement as a young adult. By order dated November 19, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.¹

STANDARD OF REVIEW

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest,"

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(b)(1).

Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

DISCUSSION

A. New York City Department of Correction

As an agency of the City of New York, the New York City Department of Correction (DOC) is not an entity that can be sued in its own name. N.Y. City Charter ch. 17, § 396 (“[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law.”); *Jenkins v. City of New York*, 478 F.3d 76, 93 n.19 (2d Cir. 2007); *see also Emerson v. City of New York*, 740 F. Supp. 2d 385, 396 (S.D.N.Y. 2010) (“[A] plaintiff is generally prohibited from suing a municipal agency.”). Plaintiff’s claims against the DOC must be dismissed because claims against the DOC must be brought against the City of New York.

B. DOC Commissioner Cynthia Brann

The Clerk of Court is directed to notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that DOC Commissioner Cynthia Brann waive service of summons.

CONCLUSION

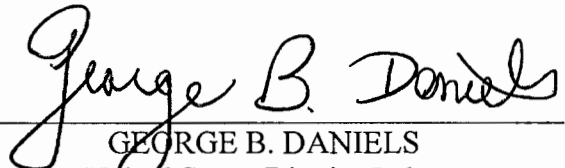
The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package. The Court dismisses Plaintiff’s claims against the New York City Department of Correction because this entity cannot be sued in the name of the agency.

The Clerk of Court is directed to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Defendant DOC Commissioner Cynthia Brann waive service of summons.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: November 21, 2019
New York, New York



GEORGE B. DANIELS
United States District Judge